

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

DATE/TIME : FEBRUARY 14, 2006
JUDGE : GAIL D. OHANESIAN
REPORTER : NONE

DEPT. NO : 11
CLERK : C. LEWIS
BAILIFF : NONE

SOUTHERN CALIFORNIA EDISON COMPANY,
Petitioner,

VS. Case No.: 05CS00860

STATE ENERGY RESOURCES CONSERVATION AND
DEVELOPMENT COMMISSION,
Respondent.

COUNSEL:
BEN DAVIDIAN
BETH A. FOX
MICHAEL A. BACKSTROM
VICKI THOMPSON
CHRISTOPHER WARNER

CARYN J. HOLMES
WILLIAM M. CHAMBERLAIN

Nature of Proceedings: PETITION FOR WRIT MANDATE AND DAMAGES

Ruling on Submitted Matter

1. Motion to Seal Portion of Administrative Record is granted. Petitioner shall prepare an order for the court's signature consistent with California Rules of Court, rule 243.1, et seq., including the necessary findings.

2. Motion to Augment Record is denied. The document did not exist at the time that Respondent made its decision. It is not relevant to the court's review of the Respondent's decision pursuant to Public Resources Code section 25901(b).

3. Petition for Writ of Administrative Mandate.

Petitioner challenges Respondent's decision issued May 11, 2005, which denied their appeal concerning their request for confidentiality for annual peak demand data. Petitioner here argues, among other things, that Respondent did not proceed in the manner required by law and the decision is not supported by substantial evidence. Petitioner contends that respondent Energy Commission applied the wrong standard in this matter by not using the reasonable claim standard of Title 20, California Code of Regulations, section 2505, and by not using the correct standard for determining what is a trade secret. The court finds that the record as a whole reflects that Respondent was aware of those standards and did follow them.

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BY: C. LEWIS ,
Deputy Clerk

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Petitioner was required to submit certain data to the Respondent Energy Commission. (See Pub. Resources Code, § 25320.) Under Public Resources Code section 25322 and section 2505, subdivision (a)(1), of Respondent's regulations, Petitioner was entitled to apply to the Commission for a determination that all or a portion of those records are confidential and, therefore, should not be disclosed to the public. As relevant here, under section 2505 of the regulations, that application is to be granted if the applicant has made a reasonable claim that the subject data are a trade secret. (Cal. Code Regs., tit. 20, § 2505, subd. (a)(3)(A).)

Accordingly, Petitioner presented evidence, including but not limited to the Plott/Cason study, to Respondent to show how disclosure of the subject information would cause a loss of a competitive advantage to them and to show that the subject data are a trade secret within the meaning of the trade secrets law. The Executive Director denied the claim for confidentiality of forms containing annual electricity peak demand data. After Petitioner appealed from the decision of the Executive Director, the Respondent Commission held a hearing. At that hearing, evidence was presented on both sides of the question of whether or not these data constitute a trade secret. The Commission concluded that, based on the evidence, the information in question was not a trade secret and, therefore, applicant had not made a reasonable claim that these data are a trade secret. There was substantial evidence to support the determination that the subject data are not a trade secret. This finding implicitly included a finding that Petitioner did not make a reasonable claim that the data are a trade secret. Moreover, the decision, at page 3, refers to the reasonable claim standard. At page 9, item 4, Respondent concluded that "SCE has not made a reasonable argument that these data are a trade secret" In addition, the comment of Commissioner Pfannenstiel, who recused herself from voting, is not sufficient to support Petitioner's argument that Respondent applied the wrong standard in this regard.

Petitioner also argues that Respondent did not apply the correct standard for determining a trade secret. The definition of a trade secret, in pertinent part, is whether information has actual or potential economic value. (Civ. Code, § 3426.1.) Petitioner contends that Respondent only determined whether the information had actual value and not whether it had potential value. The decision, at page 2, properly sets out the applicable definition. After the evidentiary hearing, Respondent found at page 6 of its decision that "there is thus no 'economic value' that SCE obtains from nondisclosure and the data does not constitute a trade secret." Also, Finding of Fact No. 9 at page 8 of the decision includes the following finding: "Therefore, disclosure of annual electricity peak demand data does not provide economic value to entities buying energy from or selling energy to SCE." A finding that this data has no economic value implicitly includes a finding that it has neither actual nor potential

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value. Petitioner's contention that Respondent applied the wrong legal standards is without merit.

The court finds that the decision was supported by substantial evidence. There was evidence from Jaske and Kelly that is substantial and that supports the decision. This court is not to reweigh the evidence. Commissioner Geesman's criticism of the Plott/Cason study did not violate Petitioner's due process rights. Petitioner did not preserve any objection on that point in any event.

The court finds that Public Utilities Code section 454.5(g) does not apply to Respondent Commission. Respondent is not acting as an agent of the CPUC. They are separate agencies with separate responsibilities. The fact that they have agreed to cooperate in some respects does not make one the agent of the other when it is fulfilling its own duties.

The court finds that Respondent did not act in excess of its jurisdiction for all the reasons noted above, and that Petitioner's contentions that the decision was not supported by the evidence and that the Respondent failed to proceed in the manner required by law are without merit.

The petition for writ of mandate is denied. Petitioner's request for damages is also denied.

Respondent shall prepare a judgment consistent with this ruling and in compliance with California Rules of Court, rule 391. Respondent shall recover its costs pursuant to a memorandum of costs, including any costs recoverable under Government Code section 6103.5.

Dated:

Honorable GAIL D. OHANESIAN,
Judge of the Superior Court of California,
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CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above entitled notice in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at Sacramento, California.

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Dated: 02-14-06

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Deputy Clerk